
Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Pay Telephone
Reclassification and Compensation Provisions of
the Telecommunications Act of 1996

CC Docket No. 96-128

CCB/CPD No. 99-35

The Michigan Pay Telephone Association's
Petition for Declaratory Ruling Regarding the
Prices Charged by Ameritech Michigan and GTE
North, Inc. for Network Access Services Made
Available to Payphone Providers in Michigan

COMMENTS OF AMERITECH MICHIGAN

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Its Attorneys

December 17, 1999

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COMMENTS OF AMERITECH MICHIGAN

Ameritech Michigan¹ files these comments in response to "Michigan Pay Telephone Association's Petition for Declaratory Ruling," showing:

SUMMARY ARGUMENT

This petition is inappropriate and should be dismissed. The Michigan Pay Telephone Association ("MPTA") filed a complaint with the Michigan Public Service Commission ("Michigan state commission") challenging its approval of Ameritech Michigan's local payphone services rates. After the state commission denied MPTA's complaint, MPTA appealed. That appeal is pending. Hence, this petition is premature. Worse, however, is the fact that the MPTA seeks to improperly influence that appeal by a collateral attack. This petition

¹ Michigan Bell Telephone Company, a Michigan corporation, is a wholly owned subsidiary of Ameritech Corporation, which in turn is wholly owned by SBC Communications Inc. Michigan Bell offers telecommunications services and operates under the name "Ameritech Michigan," pursuant to assumed-name filings with the State of Michigan.

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CCB/CPD No. 99-35

December 17, 1999

should be dismissed, and the State of Michigan should be permitted to handle the matter entrusted to it by the Commission in its *Payphone Orders*.

While the Commission need not consider the merits of the petition, Ameritech Michigan shows that the Michigan state commission correctly applied the “new services test” to the rates in question. MPTA seeks to corrupt the meaning of the new services test by making it a rigid, narrow, and non-discretionary process. It is not. The Commission designed the test to be flexible and left room for discretionary judgments. In this case, the discretion is exercised by the Michigan state commission. MPTA’s petition amounts to little more than MPTA’s unhappiness with the discretionary judgments made by the Michigan state commission and with MPTA’s failure to carry its burden of proof in the state proceedings.

BRIEF PROCEDURAL HISTORY

In the *Payphone Orders*,² the Commission directed the local exchange carriers (“LECs”) to file intrastate and interstate tariffs “for the basic payphone services and unbundled functionalities”³ The Commission directed that these tariffs be

² *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation of the Telecommunications Act of 1996*, CC Docket 96-128, CC Docket 91-35, *Report and Order*, FCC 96-388 (rel. Sept. 20, 1996) (“First Order”); *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation of the Telecommunications Act of 1996*, CC Docket 96-128, CC Docket 91-35, *Order on Reconsideration*, FCC 96-439 (rel. Nov. 8, 1996) (“Recon Order”); *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation of the Telecommunications Act of 1996*, CC Docket 96-128, CC Docket 91-35, *Second Report and Order*, FCC 97-371 (rel. Oct. 9, 1997) (“Second Order”); *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation of the Telecommunications Act of 1996*, CC Docket 96-128, CC Docket 91-35, *Memorandum Opinion and Order*, DA 98-481 (rel. March 9, 1998) (“MO&O”); *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation of the Telecommunications Act of 1996*, CC Docket 96-128, CC Docket 91-35, *Third Report and Order*, FCC 99-007 (rel. Feb. 4, 1999) (“Third Order”). These orders constitute part of the series of orders known as the *Payphone Orders*.

³ *Order on Reconsideration*, ¶ 163.

- cost based;
- consistent with the requirements of § 276 of the Act; and
- nondiscriminatory.⁴

The states were charged with the responsibility of “ensur[ing] that the basic payphone line is tariffed by the LECs in accordance with the requirements of Section 276.”⁵ To this end, the states were directed to apply the above-listed requirements and “the Computer III guidelines for tariffing such interstate services.”⁶ Ameritech Michigan had on file intrastate tariffs with the Michigan state commission, which set the rates, terms, and conditions for payphone services and features. In accordance with the directives of the *Payphone Orders*, Ameritech Michigan filed cost support and other documentation with the Michigan state commission, demonstrating compliance with the new services test. Following a review of this information and the tariffs, the Michigan state commission determined that no changes were required in Ameritech Michigan’s payphone service rates.

This matter arises from a complaint filed by MPTA with the Michigan state commission. In that complaint, MPTA sought to challenge Ameritech Michigan’s rates for basic payphone services. MPTA complained that Ameritech Michigan’s rates violated § 276 of the 1996 Telecommunications Act⁷ on the grounds that they were not cost-based and were not consistent with the requirements of § 276; that is, MPTA alleged that the tariffs did not eliminate intrastate

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ 47 U.S.C. § 276.

payphone subsidies from basic exchange and exchange access revenues.⁸ In short, MPTA complained that Ameritech Michigan's tariffs did not pass the new services test imposed by the *Payphone Orders*.

In the complaint case, the parties conducted extensive discovery. In addition, there were numerous briefs filed, several days of hearings, at which witnesses were cross-examined and exhibits offered into evidence, and argument. On February 16, 1999, the administrative law judge issued his "Proposal for Decision," to which the parties filed exceptions. On March 8, 1999, the Michigan state commission issued its "Opinion and Order."⁹ MPTA filed a petition for rehearing, which was denied.¹⁰ In accordance with Michigan law, MPTA filed an appeal as of right of the Michigan state commission's rulings with the Michigan Court of Appeals.¹¹ That appeal is still pending.

ARGUMENT AND CITATION OF AUTHORITIES

A. MPTA seeks to subvert the state appellate process.

The Michigan state commission did exactly what this Commission directed it to do in the *Payphone Orders*: it ensured that the basic payphone line was tariffed by Ameritech Michigan in

⁸ In addition to asserting the Ameritech Michigan's tariffs were inconsistent with the new services test, MPTA's Complaint filed with the Michigan state commission made a claim that Ameritech Michigan's payphone operations were subject to an imputation test pursuant to § 363 of the Michigan Telecommunications Act and its services were discriminatory.

⁹ *In the Matter of the Complaint of the Michigan Pay Telephone Association et al. Against Ameritech Michigan and GTE North Incorporated*, Michigan Public Service Commission, *Opinion and Order*, Case No. U-11756 (March 8, 1999) ("Michigan Order").

¹⁰ *In the Matter of the Complaint of the Michigan Pay Telephone Association et al. Against Ameritech Michigan and GTE North Incorporated*, Michigan Public Service Commission, *Order*, Case No. U-11756 (May 11, 1999).

¹¹ *Michigan Pay Telephone Association, et al., v. Michigan Bell Telephone Company, GTE North Incorporated, and Michigan Public Service Commission*, Court of Appeals, State of Michigan, Docket No. 219950 ("Appellate Case").

accordance with the requirements of § 276.¹² It is only reasonable to presume that, when the Commission chose to rely on the states to tariff basic payphone services, the Commission understood that the states would rely on established rate setting and tariffing procedures and the mechanisms in place for challenging decisions made pursuant to them. Those procedures were followed in this case, including MPTA's decision to file an appeal. At best, MPTA's petition is premature; at worst, it is a collateral attack on — and therefore a subversion of — the appellate process begun when MPTA appealed the Michigan state commission's order.

This petition is premature because the complaint process has not completely unfolded at the state level. Indeed, in this proceeding, the MPTA is asking the Commission to find the very thing it has already asked the Michigan Court of Appeals to find — that is, to find that the Michigan state commission erroneously applied the new services test. Attached as Exhibit 1 to these comments is the docketing statement filed by MPTA with the Court of Appeals. Items 8 and 9 list the issues that the MPTA has asked the appellate court to address. It is apparent that the issues on the new services test are the same as those the MPTA is asking the Commission to decide. MPTA still has the opportunity to convince the state appeals court and, if necessary, the state supreme court of the correctness of its arguments. If MPTA is successful, the matter can be returned to the Michigan state commission for further action. Consequently, there is no reason for this Commission to alter its original plan to entrust intrastate tariffing of the basic payphone services to the states.

This petition is a collateral attack on the appellate process because MPTA improperly seeks to influence it from the outside, as well as to introduce evidence and arguments not in the record under review. As the complainant, MPTA had the burden of proving its case under

¹² *Recon Order*, ¶ 163.

Michigan law.¹³ It had every opportunity to tender evidence and to argue points of law. Insofar as MPTA seeks to offer evidence outside of the record and to proffer new arguments not made to the Michigan state commission, MPTA subverts the appellate process.

What is more, MPTA hopes to have this Commission tell the appellate court how it should decide the appeal. It is clear from the *Payphone Orders* that the Commission recognized that the explanation of the new services test in the regulations — 47 C.F.R § 61.49(g)(2) — and in the *Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture* were sufficient direction to the states to properly tariff basic payphone services in accordance with the requirements of § 276. MPTA has not made the case that the Commission's initial judgment was in error. Indeed, MPTA argues that it has been able to decipher the requirements of the new services test from the regulations and explanations without further direction from the Commission. This Commission should expect nothing less from the Michigan state commission and the Michigan appellate courts.

B. The Michigan state commission correctly applied the new services test.

The heart of the legal problem with MPTA's petition is that MPTA insists on making the new services test a rigid, narrow, and limited evaluation. It is not. In establishing the new services test, the Commission purposefully made it flexible and discretionary. The test is divided into two parts. In the first, the object is identifying the direct costs; in the second, the object is adding the appropriate level of overhead costs.

With respect to identifying the direct costs, the Commission recognized that the public interest is best served by innovation and flexibility:

¹³ MCL § 484.2203(3).

Because we believe that the public interest will be served by providing LECs with an adequate incentive to innovate, we conclude that a flexible cost-based approach is the best way of controlling both excessive pricing and discrimination.¹⁴

To this end, the Commission listed the submissions needed to identify the direct costs.¹⁵

With respect to adding the appropriate level of overhead costs, the Commission recognized that it would have to evaluate the reasonableness of the overhead on a case-by-case basis:

Once the direct costs have been identified, LECs will add an appropriate level of overhead costs to derive the overall price of the new service. To provide the flexibility needed to achieve efficient pricing, we are not mandating uniform loading, but BOCs will be expected to justify the loading methodology they select as well as any deviations from it. We will evaluate the reasonableness of the manner in which overhead costs are loaded onto the cost of the service,¹⁶

Hence the Commission avoided mandating any particular level of loading and chose reasonableness as the gauge for whether any particular load was appropriate. In the interstate tariff environment, the Commission determines reasonableness. In the intrastate tariff environment, the states make that determination. Reasonableness is inherently discretionary.

MPTA argues that the Michigan state commission erred in “not rely[ing] upon consistent forward-looking economic costs to identify the direct costs of the services.”¹⁷ Yet, there is nothing in § 276, the *Payphone Orders*, or the Commission’s regulations requiring that direct costs under the new services test be forward looking. Indeed, as LECs are directed under the

¹⁴ *In the Matter of Amendments of Part 69 of the Commission Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture; Pricing Rules Concerning Rates for Dominant Carriers*, CC Docket No. 89-79; CC Docket No. 87-313, *Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking*, FCC 91-186, 6 FCC Rcd 4524, 4531, ¶ 41 (rel. July 11, 1991) (“Part 69 Amendment Order”).

¹⁵ *Id.*, ¶ 42; 47 C.F.R. § 61.49(G).

¹⁶ *Id.*, ¶ 44.

¹⁷ “Michigan Pay Telephone Association’s Petition for Declaratory Ruling,” p. 12. (“Petition”)

new services test to submit “other cost accounting studies to identify the direct costs of providing the new service,”¹⁸ the Commission expected that the costs be accounting costs as opposed to forward-looking or economic costs.

In this vein, MPTA wants the Commission to direct the state to use a single, fixed overhead loading. Specifically, MPTA wants the Commission to direct the Michigan state commission to use the same overhead markup applied by Ameritech Michigan to the unbundled network elements that it sells at the wholesale level to competitive local exchange carriers. As already pointed out, the new services test does not expressly or impliedly mandate a single, fixed loading factor. In fact, as reasonableness is the ultimate test of the loading factor, such a requirement would turn that test on its head. What is reasonable in one situation is not necessarily so in another and what is reasonable to one finder-of-fact may not be reasonable to another. MPTA would rewrite the new services test to serve its own ends.

Equally important is that MPTA is not comparing apples to apples. Selling unbundled network elements to telecommunications carriers is a wholesale service. Payphone services, however, are retail, and IPPs are not telecommunications carriers.¹⁹ The Commission made this point emphatically in the *Payphone Orders*:

We decline to require, as proposed by AT&T, that the pricing regime under Sections 251 and 252 apply to all Section 276 payphone services offered by incumbent LECs. Section 276 does not refer to or require the application of Sections 251 and 252 to LEC payphone services. In addition, the elements and services to be offered under Sections 251 and 252 are not available to entities that are not telecommunications carriers, and many PSPs are not telecommunications

¹⁸ Part 69 Amendment Order, ¶ 42.

¹⁹ “With regard to independent payphone providers, however, we agree with the American Public Communication Council’s argument that such carriers are not ‘telecommunications carriers’ under section 3(44).” *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order*, FCC 96-325, 11 FCC Rcd 15499, ¶ 876 (rel. Aug. 8, 1996) (“Local Competition Order”).

carriers. In addition, Section 276 does not refer to or require the application of Sections 251 and 252 to LEC payphone services.²⁰

Along this line it should be noted that unbundled network elements are themselves different from payphone services. First, IPPs can buy IPP lines and related services from other providers. This is not so for unbundled network elements. There are numerous local exchange carriers authorized to provide payphone services in Michigan, three of which have tariffs on file to offer such services in competition with Ameritech Michigan. Second, as admitted in testimony adduced at the hearings in the complaint case, IPPs purchase access lines, directory information, call screening, call blocking, intraLATA toll and Answer Supervision from Ameritech Michigan. These services are not unbundled network elements.

C. Ameritech Michigan appropriately applies EUCLs and PIC charges to IPPs.

The Commission's rules permit Ameritech Michigan to assess the end user common line ("EUCL") charge in addition to the access line rates that Ameritech Michigan charges to IPPs. The same EUCL charge is imputed to access lines sold to Ameritech Michigan's payphone provider division.

Ameritech Michigan is not "double recovering" the costs of loop facilities. MPTA seems to believe that there is a one-to-one comparison between the costs recovered by the EUCL charge and the direct costs that go into the rate for Ameritech Michigan's payphone services.

²⁰ First Order, ¶ 147. See also Local Competition Order, ¶ 876: "We therefore . . . agree with the American Public Communication Council's contention that the services independent payphone providers obtain from incumbent LECs are telecommunications services that incumbent LECs provide 'at retail to subscribers who are not telecommunications carriers' Because we conclude that independent payphone providers are not 'telecommunications carriers,' however, we conclude that incumbent LECs need not make available service to independent public payphone providers at wholesale rates. This is consistent with our finding that wholesale offerings must be purchased for the purpose of resale by 'telecommunications carriers.'"

Comparing EUCLs to the incremental direct costs is incorrect. The EUCL charge and the incremental costs are two separate things. The EUCL charge is part of interstate access rates and not intrastate local service rates.²¹

The presubscribed interexchange carrier charge ("PICC") was established by the Commission to more correctly recover non-traffic-sensitive costs as part of the Commission's Access Reform Order. It is assessed to the end user's presubscribed IXC and not the end user itself. Although some IXCs have chosen to pass this charge on to their end-user customers, PICCs are billed to IXCs for both presubscribed payphone lines and presubscribed residence and business lines. More importantly, however, the application of the PICC to IPPs is the subject of a pending docket.²² Consideration of this topic ought to be reserved to that docket and not considered in this proceeding.

CONCLUSION

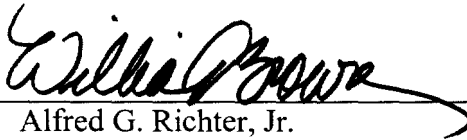
For these reasons, the Commission should deny MPTA's petition in its entirety.

²¹ Local Competition Order, ¶ 984. ("The SLC [subscriber line charge] is a component of interstate access charges, not of intrastate local service rates.") What is more, the issue at hand is whether the rates charged to Michigan IPPs recover a reasonable amount of overhead. The EUCL charge is relevant only in relation to a comparable service. Here, the comparable service is the basic business line and the EUCL in question is assessed on the IPPs in the same manner in which it is assessed on basic business customers.

²² *In the Matter of Assessment of Presubscribed Interexchange Carrier Charges on Public Payphone lines*, Docket No. CCB/CPD 98-34.

Respectfully submitted,

AMERITECH MICHIGAN

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Its Attorneys

December 17, 1999

O'Keefe Ashenden Lyons & Ward*A Partnership Including Professional Corporations*

Henry T. Kelly

HKelly@oalw.com

July1, 1999

Via Federal Express

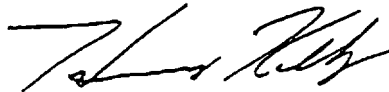
Carl L. Gromek, Esq.
Chief Clerk
Michigan Court of Appeals
109 W. Michigan
Lansing, Michigan 48909-7522

RE: *Michigan Pay Telephone Association, et al. v. Michigan Public Service
Commission.*

Dear Mr. Gromek:

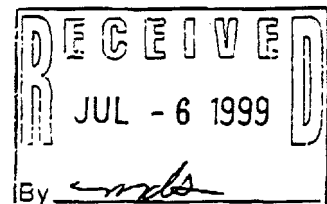
Enclosed for filing with respect to the above matter, please find the docketing statement filed by the Appellants. As indicated on the proof of service, we have served a copy of the docketing statement on all parties of record.

Sincerely,



Henry T. Kelly

Encl.



Approved, SCAO

928
7/98

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY TRIAL JUDGE	DOCKETING STATEMENT MCR 7.204(H)	CASE NO. U-11756 CIRCUIT: MPSC COURT OF APPEALS: 219950
Court address		Court telephone no.

Instructions:

- MCR 7.204(H) requires appellant to file a docketing statement in a civil appeal.
- The purpose of the docketing statement is to facilitate the efficient processing of appeals by allowing the Court of Appeals to quickly identify jurisdictional problems, other related cases, and appropriate settlement conference cases, among other things.
- Appellee may respond by filing a separate docketing statement if desired.
- The requirement that appellant identify issues in the docketing statement will not limit appellant's presentation of issues in appellant's brief. Omission of an issue from the docketing statement will not provide an appropriate basis for a motion to strike any portion of appellant's brief. However, early and accurate identification of issues is critical to the success of the Court's settlement conference program and improved case processing.
- Please type or print. Appellant must complete the statement fully and accurately.
- Two copies must be filed with the clerk of the Court of Appeals within 28 days after the claim of appeal is filed or the application for leave to appeal is granted, and a copy must be served on the opposing parties. Failure to timely file this document may lead to dismissal of your appeal.

1. Case title

Plaintiff name, address, and telephone no.	<input checked="" type="checkbox"/> Appellant <input type="checkbox"/> Appellee
Michigan Pay Telephone Association	
Plaintiff attorney name, address, telephone no., and bar no.	
Henry T. Kelly O'Keefe Ashenden Lyons & Ward 30 N. LaSalle Street, #4100 Chicago, IL 60602	

v

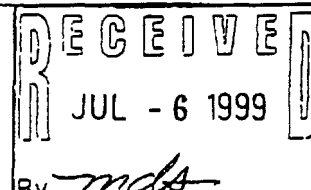
Defendant name, address, and telephone no.	<input type="checkbox"/> Appellant <input checked="" type="checkbox"/> Appellee
See Attached Listing	
Defendant attorney name, address, telephone no., and bar no.	
See Attached	

2. Additional appellees

Name of appellee
Attorney name, address, telephone no., and bar no.
William Ralls Leland R. Rosier Kelley Cawthorne & Ralls 120 N. Washington Square, Suite 1050 Lansing, Michigan 48933

Name of appellee
Attorney name, address, telephone no., and bar no.
See Attached

continued on page 2



DOCKETING STATEMENT, page 2

3. Names of all other parties to the action who will not, or are not expected to, participate in the appeal.

Name of party and designation
See Attached
Attorney name, address, telephone no., and bar no.
See Attached

Name of party and designation
Attorney name, address, telephone no., and bar no.

4. ☐ A bankruptcy petition has been filed in another court which affects this court's jurisdiction over this appeal as follows:
☐ Another proceeding has been commenced which affects this court's jurisdiction over this appeal as follows:

Name of proceeding(s)

5. ☒ a. There are pending appeals in the Court of Appeals or Supreme Court which arose out of the same transaction, lower court case, or between the same parties.

Case name	Lower court no.	Docket no(s).	Citation
Ameritech v. MPSC	U-11410	210542-L	

- ☐ b. There are prior appeals arising out of the same transaction, lower court case, or between the same parties.

Case name	Lower court no.	Docket no(s).	Citation

- ☐ c. I am aware of the following pending appeals in the Court of Appeals or Supreme Court raising the same or closely related issues.

Case name	Lower court no.	Docket no(s).	Citation

continued on page 3

DOCKETING STATEMENT, page 3

921
798

6. The following are all lower court trial, motion, and other hearing proceedings and the dates held.

Instruction: Follow up with the lower court clerk's office to make sure that all transcripts are forwarded to the Court of Appeals with the lower court record [MCR 7.210(B)]. Missing transcripts will cause the case to be delayed or dismissed. If some transcripts have not been ordered, explain why.

Type of proceeding	Dates	Court reporter	Judge	Explanation if transcripts not ordered
Administrative Hearing	11/9/98-11/10/98 11/16/98-11/19/97	Dolman Technologies	Nickerson	

7. Nature of case (check the categories which describe the matters on appeal)

a. Procedural posture of case:

- ☐ arbitration ☐ bench trial ☐ jury trial ☐ declaratory judgment
☐ interlocutory matter ☐ original action in Court of Appeals ☐ post judgment action ☐ summary disposition
☒ administrative proceeding (specify agency involved) Michigan Public Service Commission
☐ writ (mandamus, superintending control) _____
☐ other _____

b. Substantive nature of case:

- | | | |
|--|---|---|
| <input type="checkbox"/> banking law
<input type="checkbox"/> civil procedure
<input type="checkbox"/> contempt
<input type="checkbox"/> costs and attorney fees
<input type="checkbox"/> discovery
<input type="checkbox"/> civil rights (non-employment related)
<input type="checkbox"/> commercial transactions
<input type="checkbox"/> condemnation/ eminent domain
<input type="checkbox"/> conflicts of law
<input type="checkbox"/> contracts (non-employment related)
<input type="checkbox"/> corporations and partnerships
<input type="checkbox"/> domestic relations
<input type="checkbox"/> alimony
<input type="checkbox"/> child support
<input type="checkbox"/> custody/parenting time
<input type="checkbox"/> property division
<input type="checkbox"/> paternity
<input type="checkbox"/> termination of parental rights
<input type="checkbox"/> dramshop
<input type="checkbox"/> drug forfeiture
<input type="checkbox"/> elections | <input type="checkbox"/> employment law
<input type="checkbox"/> labor relations/collective bargaining
<input type="checkbox"/> public employment (PERA)
<input type="checkbox"/> unemployment compensation
<input type="checkbox"/> wrongful discharge
<input type="checkbox"/> breach of contract
<input type="checkbox"/> civil rights/discrimination
<input type="checkbox"/> age
<input type="checkbox"/> gender
<input type="checkbox"/> handicap
<input type="checkbox"/> race
<input type="checkbox"/> Touissant
<input type="checkbox"/> governmental immunity
<input type="checkbox"/> insurance
<input type="checkbox"/> automobile (no fault)
<input type="checkbox"/> environmental cleanup
<input type="checkbox"/> homeowners
<input type="checkbox"/> other _____
<input type="checkbox"/> landlord-tenant
<input type="checkbox"/> malpractice
<input type="checkbox"/> legal
<input type="checkbox"/> medical
<input type="checkbox"/> professional - other _____ | <input type="checkbox"/> natural resources/environmental law
<input type="checkbox"/> prisoner appeal
<input type="checkbox"/> parole
<input type="checkbox"/> prisoner rights
<input type="checkbox"/> other _____
<input type="checkbox"/> real property
<input type="checkbox"/> schools
<input type="checkbox"/> taxation
<input type="checkbox"/> teachers
<input type="checkbox"/> torts/negligence/strict liability
<input type="checkbox"/> liability
<input type="checkbox"/> general negligence
<input type="checkbox"/> premises liability
<input type="checkbox"/> products liability
<input type="checkbox"/> torts _____
<input checked="" type="checkbox"/> utilities
<input type="checkbox"/> wills, estates, trusts
<input type="checkbox"/> workers' compensation
<input type="checkbox"/> zoning
<input type="checkbox"/> other _____ |
|--|---|---|

c. Other dispositive claim:

- | | |
|---|--|
| <input checked="" type="checkbox"/> damages
<input checked="" type="checkbox"/> amount/calculation
<input checked="" type="checkbox"/> attorney fees and costs
<input type="checkbox"/> interest
<input type="checkbox"/> mitigation
<input type="checkbox"/> other _____
<input type="checkbox"/> jurisdiction (lower court) | <input type="checkbox"/> law of the case
<input type="checkbox"/> mootness
<input type="checkbox"/> res judicata/collateral estoppel
<input type="checkbox"/> statute of limitation
<input type="checkbox"/> venue
<input type="checkbox"/> other _____ |
|---|--|

DOCKETING STATEMENT, page 4

Instructions: Items 8 through 11 are primarily for settlement conference purposes [MCR 7.213(A)]. Attach additional pages if necessary.

8. Brief description of the nature of the action and the result in the trial court. (General conclusory statements such as "the judgment of the trial court is not supported by the law or fact" are unacceptable.)

The underlying complaint brought before the Michigan Public Service Commission sought to compel enforcement of the Michigan Telecommunications Act requirements that Ameritech and GTE comply with nonstructural safeguards ordered by the Federal Communications Commission. The FCC has held that one such nonstructural safeguard is the requirement that Ameritech and GTE price the network services made available to payphone providers at the cost of the service, plus a reasonable amount to recover the LECs' overhead expenses, and that the services be nondiscriminatory. [See additional page]

9. Brief statement of all issues to be raised in this appeal. (This information will also be used to place cases on different processing tracks so it is important to be as accurate as possible.)

1. Whether the Commission's order and order on rehearing denying the Complaint failed to make adequate findings of fact and conclusions of law;
2. Whether the telecommunications network services made available by Ameritech and GTE to payphone providers are cost-based and comply with the New Services Test pricing formula mandated by the FCC; and
3. Whether the telecommunications network services made available by Ameritech and GTE to payphone providers are discriminatory.

10. Settlement negotiations. (Check all boxes that apply.)

- ☐ Settlement negotiations have been conducted among the parties since the verdict.
☐ Settlement negotiations have been scheduled.
☒ Settlement is unlikely.
☐ Other _____

11. The amount and terms of the judgment appealed are: N/A

7.1.99
Date


Signature

PROOF OF SERVICE

I certify that copies of this docketing statement and any attachments were served on all opposing parties/attorneys by regular mail at their last known addresses.

7.1.99
Date


Signature

(Additional Page)


8. **Brief description of the nature of the action and the result in the trial court.
(General conclusory statements such as "the judgment of the trial court is not supported by the law or fact" are unacceptable)**

The MPSC granted in part and denied in part of the Complaint. The

MPSC found that Complainants had failed to carry their burden of proof.

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing "COMMENTS OF AMERITECH MICHIGAN" in CC Docket No. 96-128 and CCB/CPD FILE No. 99-35 has been filed this 17th day of December 1999 to the Parties of Record.

A handwritten signature in black ink, reading "Katie M. Turner", written over a horizontal line.

Katie M. Turner

December 17, 1999

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